

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JACOB ANDREW JOHNSTON,

Plaintiff(s),

v.

WAYLON HOWARD; and ERIC WULF,

Defendant(s).

CASE NO. 3:22-cv-05089-TL-TLF

ORDER

This matter comes before the Court on the Report and Recommendation of the Honorable Theresa L. Fricke, United States Magistrate Judge (Dkt. No. 48) (“R&R”), and Plaintiff Jacob Andrew Johnston’s objections to the R&R (Dkt. Nos. 49, 50). Having reviewed the R&R, Plaintiff’s objections, and the remaining record, the Court REJECTS the R&R and DENIES Plaintiff’s motion for a voluntary dismissal. Dkt. No. 46.

I. BACKGROUND

Plaintiff is an incarcerated individual who sues two corrections officers for allegations of excessive force on December 5, 2021. Dkt. No. 5 (complaint); *see* Dkt. No. 29 (order identifying

1 the operative complaint). Plaintiff proceeds *pro se* and *in forma pauperis*. Dkt. No. 4. As an
2 incarcerated individual, however, Plaintiff's *in forma pauperis* status means that he must pay
3 monthly payments until the full amount of the \$350 filing fee is satisfied. *Id.*

4 Plaintiff moved for voluntary dismissal (the "Motion"), stating, "I Plaintiff Jacob
5 Johnston have decided to cancel all Court proceeding of case against [Defendants] . . . plaintiff
6 feels there is not enough damage done to plaintiff . . . to proceed in [the] lawsuit."¹ Dkt. No. 46.
7 Defendants responded by noting they have no objections to a dismissal. Dkt. No. 47 at 2.
8 Accordingly, Judge Fricke issued an R&R recommending that Plaintiff's Motion be granted and
9 the case dismissed without prejudice, pursuant to Federal Rule of Civil Procedure ("FRCP")
10 41(a)(2). Dkt. No. 48 at 2.

11 Subsequently, however, Plaintiff filed two objections, expressing a desire to essentially
12 withdraw his voluntary dismissal. Dkt. No. 49 ("Plaintiff wishes to have [the] Court stop all
13 dismissal proceedings and stay on track to final decision."); Dkt. No. 50 ("Plaintiff has decided
14 that he will object to his previous decision to cancel [the] case . . ."). Plaintiff states that "there
15 is plenty of evidence against Defendants to proceed with this case as of now" (Dkt. No. 49) and
16 also lists the filing fee as another reason for continuing the litigation (Dkt. No. 50). Defendants
17 did not respond to the R&R or Plaintiff's objections but have filed a motion for summary
18 judgment, which is now briefed by the Parties. Dkt. Nos. 52, 60, 61, 65.

19 II. LEGAL STANDARD

20 A district court "shall make a de novo determination of those portions of the report or
21 specified proposed findings or recommendations to which objection is made," and "may accept,
22 reject, or modify, in whole or in part, the recommendations made by the magistrate judge." 28

23
24 ¹ Plaintiff's filings contain spelling errors. For the sake of readability, these errors have been corrected in direct quotations in this Order.

1 U.S.C. § 636(b)(1); *see also* Fed. R. Civ. P. 72(b)(3) (“The district judge must determine de novo
2 any part of the magistrate judge’s disposition that has been properly objected to.”). A party
3 properly objects when he files “specific written objections” to the report and recommendation.
4 *Id.* 72(b)(2).

5 III. DISCUSSION

6 FRCP 41(a)(2) provides that “an action may be dismissed at the plaintiff’s request only
7 by court order, on terms that the court considers proper.” A voluntary dismissal under FRCP
8 41(a)(2) does not take effect until a court order has been entered and any terms and conditions
9 imposed by the court are complied with. *Lau v. Glendora Unified Sch. Dist.*, 792 F.2d 929, 930
10 (9th Cir. 1986). The decision to grant a voluntary dismissal under FRCP 41(a)(2) is entrusted to
11 the sound discretion of the district court. *Navellier v. Sletten*, 262 F.3d 923, 938 (9th Cir. 2001).

12 Plaintiff’s voluntary dismissal has not taken effect yet, as no court order has been entered
13 on his Motion. The R&R’s recommendation of granting the Motion was based on Plaintiff’s
14 request for a dismissal, which Plaintiff now seeks to withdraw. To dismiss the case would
15 prejudice not only Plaintiff, who wishes to proceed in the litigation, but also Defendants, who
16 have already expended resources on the motion for summary judgment. Given this change in
17 circumstances, the Court finds it appropriate to permit the litigation to proceed.

18 IV. CONCLUSION

19 Accordingly, the Court DENIES Plaintiff’s Motion (Dkt. No. 46) as moot. The case is
20 referred back to Judge Fricke for further proceedings.

21 Dated this 14th day of December 2022.

22 
23 _____
24 Tana Lin
United States District Judge